

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WQO 2005-0001

In the Matter of the Petition of

HUMBOLDT WATERSHED COUNCIL

For Review of Enrollment of Four Pacific Lumber Company Timber Harvesting
Plans under General Waste Discharge Requirements, Order No. R1-2004-0030
California Regional Water Quality Control Board,
North Coast Region

SWRCB/OCC FILE A-1683

BY THE BOARD:

The Executive Officer of the North Coast Regional Water Quality Control Board (Regional Board) enrolled four timber harvesting plans (THPs) submitted by the Pacific Lumber Company (PALCO) under General Waste Discharge Requirements Order No. R1-2004-0030 on December 24, 2004. The THPs are located in the drainages of Freshwater Creek and the Elk River, areas that had previously been subject to State Water Resources Control Board (State Board) review. The Humboldt Watershed Council (Council) filed a timely petition with the State Board contesting the validity of those enrollments and asking that the State Board stay the effective date of those enrollments until the petition could be addressed on its merits.

For the reasons discussed below, the Request for Stay is denied.

I. BACKGROUND

PALCO has been harvesting timber along the north coast of California for many years. More recently, a number of complaints have been received by the Regional Board about damage to property and significant impacts on water quality and fisheries resulting from runoff of dirt and debris from PALCO sites. In December 2003, the Regional Board determined that its existing regulatory approach in that area was insufficient to protect water quality. The Regional Board decided to prepare watershed-based waste discharge requirements to address the cumulative impacts of past and future timber activities. The Regional Board allowed existing

permits for calendar year 2004 to remain in effect until January 1, 2005, by which time they hoped to have the watershed-based requirements in place. Because of delays, caused in significant measure by PALCO's limited cooperation, the adoption of those requirements has been delayed until March or April of 2005.

With the expiration of the 2004 permits and the delay in adoption of the new requirements, PALCO had no legal authority to operate in the Freshwater Creek or Elk River drainages as of January 1, 2005. To bridge this gap, PALCO asked the Regional Board to allow it to proceed on a number of THPs, under the auspices of the General Order, until such time as the watershed-based requirements could be adopted. On November 29, 2004, the Executive Officer was directed by the Regional Board to "consider a limited number of THPs for enrollment in the General Waste Discharge Requirements if, and to the extent that, she can establish a record and basis for finding eligibility." With that direction, the Executive Officer found, among PALCO's 22 proposed THPs, four that justified enrollment. The Executive Officer based her decision on several factors including the limited size of the projects, the reduced harvest rates, and the additional mitigation measures involving such things as sediment control and habitat protection. It is to those four THPs that the Council objects.

To qualify for a stay, a petitioner must allege facts and produce proof of three things:

1. Substantial harm to the Petitioners or to the public interest if a stay is not granted;
2. A lack of substantial harm to other interested persons and to the public interest if a stay is granted; and
3. Substantial questions of law and fact regarding the disputed action.¹

The Council presented sufficient information in support of its request to justify holding a hearing. A notice of the hearing was sent to the parties on January 7, 2005. Each party submitted timely information to the State Board in support of its position on the Request

¹ (Cal. Code Regs., tit. 23, § 2053.)

for Stay. A hearing was held before Peter S. Silva, Vice Chair of the State Board, sitting as hearing officer by appointment of the Chair, on January 19, 2005 in the State Board's offices.²

II. CONTENTIONS AND FINDINGS

1. Contention: The Council contends that the public will suffer substantial harm if a stay is not granted.

Finding: The Council failed to present proof that operations on the four THPs will cause significant harm if a stay is not granted. The Council and the Regional Board both showed that prior operations of PALCO in the area had caused significant problems, but the Council was able to offer no evidence that the additional burden imposed by these four limited projects would add in any significant degree to those problems. Indeed, PALCO offered credible evidence in rebuttal that the erosion control program imposed by the Regional Board as a condition of its approval would actually result in a net benefit to water quality. The Regional Board witnesses were unwilling to go that far in their assessments, but testified that they saw no reason to believe that any substantial harm would result.

The burden of showing harm falls on the petitioner in every case. Here, the Council presented no documentary or testimonial evidence regarding the effects of adding the four THPs. PALCO and the Regional Board did offer evidence that no substantial harm would result. Therefore, this requirement for a stay has not been shown.

2. Contention: The Council contends that no substantial harm will result to others or to the public interest if a stay is issued.

Finding: The Council makes a case that a delay in permitting these four THPs until after the State Board has resolved the merits of the petition will cause little, if any, harm to PALCO as a company. The overall size of PALCO's operation as compared with the relatively small size of these THPs shows that the overall financial burden on the company will be relatively minor. PALCO's presentation relied very heavily on speculation and a worse case analysis that seems highly unlikely over the relevant time frame. However, the financial impact is felt, not merely by the company, but by its employees and contractors. PALCO presented

² Because this order is issued by a single State Board member sitting by appointment of the Chair, this order will not be considered precedential by the State Board.

evidence that some layoffs may be necessary and that, while collectively the impact might not be significant, the impact on the individuals and their families would be great. In addition, PALCO offered the testimony of the owner of a relatively small logging and trucking company whose business depends almost exclusively on contracts with PALCO. His company has contracted to conduct the timber operations on one of the THPs and the hauling on all four. He testified that the impact on his company and employees would be very significant if a stay were issued.

Again, the burden of proof to show that no harm will result from issuance of the stay falls entirely on the petitioner. The Council partially satisfied that requirement but failed to do so sufficiently to justify the issuance of a stay.

3. Contention: The Council contends that it has raised substantial issues of law and fact in its petition.

Finding: In light of the findings above, any consideration of the merits of the petition will be reserved for later proceedings.

III. SUMMARY AND CONCLUSIONS

To justify a stay of a Regional Board action, a petitioner must meet all three requirements of our regulations. In this case, the Council did not prove that the public would suffer substantial harm if a stay were not granted nor was it able to show that no harm would result to others from the issuance of the stay. Therefore, it is not entitled to a stay.

IV. ORDER

IT IS HEREBY ORDERED that the requested stay of the enrollment of the four THPs under General Order No. R1-2004-0030 is denied.

Date: January 20, 2005

/s/ _____
Peter S. Silva
Vice Chair/Hearing Officer